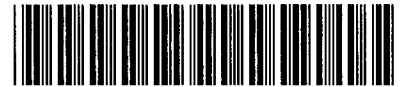


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BEFORE THE ARIZONA CORPORAT

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Arizona Corporation Commission

DOCKETED

DEC 13 2013

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY TO EXTEND
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN CASA GRANDE, PINAL
COUNTY, ARIZONA

DOCKET NO. W-01445A-03-0559

**REPLY IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER
QUASHING THE DEPOSITIONS OF
MESSRS. GERSTMAN AND ROBSON**

(Oral Argument Requested)

On November 1, 2013, Cornman Tweedy 560, LLC ("Cornman Tweedy") filed a Motion for Protective Order ("Motion") Quashing the Depositions of Messrs. Gerstman and Robson in the above-captioned matter. On November 25, 2013, Arizona Water Company ("AWC") filed its Response in Opposition ("Response") to Cornman Tweedy's Motion. Cornman Tweedy hereby files this Reply ("Reply") in Support of Motion for Protective Order.

I. INTRODUCTION.

In its Response, AWC continues its relentless effort to make this remand proceeding about the integrated utility operations of the water and sewer utilities owned by Ed Robson and his family. AWC's insistence on forcing the depositions of Ed Robson and attorney Peter Gerstman directly contravene the prior rulings of the administrative law judge ("ALJ") regarding (i) permitted depositions and (ii) the proper scope of this remand proceeding as set forth by the Arizona Corporation Commission ("Commission") at its February 1, 2011 Open Meeting, which is "whether a public service corporation, like Arizona Water, in this water challenged area and under the circumstances presented in this case, is providing reasonable service if it is not able or not willing to provide integrated water and wastewater services."¹

¹ Procedural Order dated February 10, 2011 at 2, lines 7-10.

1 Counsel for AWC has acknowledged that depositions “[are] not typical in the
2 Commission proceedings,”² and the ALJ appropriately limited the scope of the depositions in
3 this remand proceeding with the following ruling:

4 I think, Mr. Hirsch, you should be entitled to conduct discovery on testimony that
5 is submitted by Cornman Tweedy’s witnesses in this case. However, I don’t think
6 it is appropriate to expand the scope beyond that.³

7 Having already taken the depositions of all three Cornman Tweedy witnesses who are
8 sponsoring pre-filed testimony in this remand proceeding over more than 12 hours,⁴ AWC now
9 seeks to compel the additional depositions of Ed Robson and Peter Gerstman, neither of whom
10 have sponsored pre-filed testimony in this case and one of whom has provided (and continues to
11 provide) legal advice to intervnor Cornman Tweedy. It is particularly troubling that AWC
12 previously raised its request to take the depositions of Messrs. Robson and Gerstman at the
13 October 5, 2011, procedural conference and the ALJ rejected that request, ruling that taking
14 depositions of persons who have not pre-filed testimony in this remand proceeding is beyond the
15 scope of discovery based upon the limited issues before the Commission.⁵ Now, in an effort to
16 circumvent the ALJ’s ruling, AWC claims that witness Steve Soriano did not provide responsive
17 testimony in his deposition, a complete transcript of which is attached as Exhibit A to AWC’s
18 Response. This is nothing more than a diversion and a smokescreen. Anyone reading the
19 deposition will quickly see that Mr. Soriano provided responsive answers to substantially all of
20 the questions posed by AWC. And, while AWC repeatedly claims in its Response that Messrs.
21 Robson and Gerstman will have answers to questions that AWC wants answered (the vast
22 majority of which are outside the scope of this remand proceeding), AWC provides nothing to
23 show that Messrs. Robson and Gerstman are more knowledgeable (or even as knowledgeable) in
24 the relevant areas of inquiry than Mr. Soriano, Cornman Tweedy’s designated witness.

25 ² Transcript of October 5, 2011, Procedural Conference at 52, lines 9-11 (“This may be a case
26 where it is actually quicker to, it is not typical with the Commission proceedings, but to have
some depositions.”).

27 ³ *Id.* at 56, lines 3-7.

28 ⁴ AWC did not depose the late Jim Poulos, but has taken the deposition of Steve Soriano who is
adopting and sponsoring all or the pre-filed Poulos testimony.

⁵ Transcript of October 5, 2011, Procedural Conference at 53-56.

1 Additionally, AWC continues to mischaracterize the scope of this remand proceeding as
2 including the business model and business practices of the utilities of Mr. Robson and his family.
3 In fact, AWC goes even further than that and targets Robson Communities, Inc., Robson
4 development companies, Robson family members and Robson employees. For example, AWC
5 raises red-herring issues related to the Page Trowbridge Ranch Landfill located adjacent to the
6 SaddleBrooke Ranch development and campaign contributions by Robson family members
7 going back nearly 15 years. As discussed below, these matters are clearly outside the scope of
8 this remand proceeding. The proper focus of this proceeding is on AWC and its ability (or
9 inability) to provide integrated water and wastewater services to the Cornman Tweedy property.
10 If AWC was unable to cover any relevant area of inquiry in Mr. Soriano's deposition, it was
11 solely because AWC wasted time on matters that are outside the scope of this proceeding.

12 AWC has already raised its expanded view of the scope of this remand proceeding at the
13 October 5, 2011, procedural conference and the ALJ clearly rejected that view.⁶ Yet, AWC
14 continues to push for the depositions of Messrs. Robson and Gerstman based upon fallacious
15 statements and a scope of review that has been rejected by the ALJ. For all of the reasons set
16 forth herein, AWC's efforts to compel additional depositions in this remand proceeding should
17 be rejected, and the ALJ should grant Cornman Tweedy's Motion for Protective Order Quashing
18 the Depositions of Messrs. Gerstman and Robson.

19 Cornman Tweedy has two additional introductory comments. First, many of the
20 statements and assertions contained in AWC's Response are effectively nothing more than the
21 testimony or speculation of AWC's counsel, without any factual support or authority. Cornman
22 Tweedy will not attempt to address each and every erroneous statement contained in the
23 Response, but will focus on the most egregious statements.

24 Second, AWC repeatedly refers to "Robson Communities" in its Response. However, as
25 AWC knows, there are actually many separate and distinct legal entities affiliated with Mr.
26 Robson and his family and employees. Robson Communities, Inc., for example, is an
27 administrative services company which provides accounting, human resources, legal, and capital

28 ⁶ Transcript of October 5, 2011, Procedural Conference at 39.

1 budgeting support services to the family of Robson companies. Robson Communities, Inc., is a
2 separate and distinct legal entity from the various utilities that are controlled by Mr. Robson.
3 Cornman Tweedy is also separate and distinct from the other Robson companies. By lumping
4 together the many Robson companies under the heading "Robson Communities," AWC creates
5 confusion. In order to avoid such confusion, it is important that the parties be very precise in
6 identifying the particular Robson entity being discussed.

7 **II. ARGUMENT.**

8 **A. The "Business Model and Practices" of Public Utilities Generally and Robson**
9 **Utilities Specifically Are Not at Issue in this Remand Proceeding.**

10 AWC argues in its Response that "[t]he business model and practices of any and all
11 public service corporations, not just the Company's, are at issue" and that "[t]he Robson
12 Communities so-called business model is particularly at issue here."⁷ This is the essential crux
13 of the dispute between the two parties. However, the business model and practices of any
14 Robson utility or any other Robson company is clearly not at issue in this remand proceeding.
15 AWC's assertions directly contradict the stated scope of this remand proceeding as set by the
16 Commission at its February 1, 2011, Open Meeting, which is:

17 [W]hether a public service corporation, like Arizona Water, in this water
18 challenged area and under the circumstances presented in this case, is providing
19 reasonable service if it is not able or not willing to provide integrated water and
20 wastewater services.⁸

21 The ALJ provided additional detail regarding the proper scope of the remand proceeding
22 in the following exchange with legal counsel for AWC at the October 5, 2011, procedural
23 conference:

24 Mr. Hirsch: But we don't believe that means that, to properly gauge the
25 question of whether you have to be integrated to provide
26 reasonable service, means that the Robson model of providing
27 utility services through controlled developer owned utilities is out
28 of bounds for this proceeding. ...

And it is appropriate that that premise be tested because, just as we
will try whether or not Arizona Water is able and whether or not

⁷ AWC Response at 2, lines 13-17 (emphasis in original).

⁸ Procedural Order dated February 10, 2011 at 2, lines 7-10.

1 Arizona Water is willing to provide services, we will, everybody
2 would agree that's in bounds. Again, part and parcel of the nature
3 of the record that needs to be explored is whether integration truly
affects water conservation.⁹

4 Judge Nodes: But isn't that broad inquiry that you are suggesting should be
5 permitted, isn't that the very issue that I inquired about the scope of
6 the motion in which I believe the Commissioners indicated was not
7 to be the issue that was to be considered in this narrow remanded
8 portion of the proceeding?

9 How do you reconcile, what I understood at least to be, this was
10 going to be narrowly tailored to Arizona Water under the
11 circumstances of this case and what I understood in response to my
12 inquiry at the open meeting, which was, okay, then do you mean
13 we are going to look at the whole, a broad scope of other providers
14 as part of this remanded issue, and I believe it was a pretty clear
15 resounding no, that's not what we intend for you to do?¹⁰

16 * * *

17 Now, as to your second point about the wide open scope, you
18 know, that's what I was trying to determine. You know, and I
19 know that the discussion was not extensive or comprehensive on
20 what the exact, precise meaning of the motion was. But the one
21 point that I came away with based on the directive from the open
22 meeting was we don't intend this to be a broad inquiry into the
23 state policy of integration in general, that we want you, in the
24 context of the circumstances of this case to determine **whether**
25 **Arizona Water is providing reasonable service if it is not**
26 **providing integrated water and wastewater services.**

27 That was my understanding. I thought it was, that point was
28 probably the one thing the Commissioners made absolutely clear to
me in my trying to inquire exactly what they intended with regard
to the motion.¹¹

Clearly, the "business model and practices" of public utilities generally and Robson
utilities specifically are outside the scope of this remand proceeding. Yet, AWC goes well
beyond the Robson utilities, raising specious claims and accusations regarding Robson
development entities and even the owners of those entities. For example, AWC spends a page
and a half of its Response on a closed dumpsite for radioactive and toxic wastes from Arizona's

⁹ Transcript of October 5, 2011, Procedural Conference at 36-37.

¹⁰ *Id.* at 37, lines 5-19 (emphasis added).

¹¹ *Id.* at 39, lines 6-21 (emphasis added).

1 public universities known as the Page Trowbridge Ranch Landfill which is located adjacent to
2 the Robson development of SaddleBrooke Ranch. Regarding the landfill, AWC makes the
3 following inflammatory accusation:

4 Robson Communities' refusal to allow monitoring and protection of the drinking
5 water aquifer at its SaddleBrooke development raises legitimate concerns that the
6 Robson Communities business model—devised, nurtured and implemented on a
7 daily basis by Mr. Robson and Mr. Gerstman—is focused primarily on the profits
8 to be realized from the sale of new homes rather than protection of scarce water
9 resources, even if such focus hides the potential impacts of a nearby radioactive
10 and toxic waste dump site on the area's drinking water supply. This is precisely
11 the issue on remand as framed by the Commission.¹²

12 Sadly, the character assassinations and subterfuge packed into this statement, as well as
13 the complete lack of relevancy, are typical of much of the contents of AWC's Response. While
14 Cornman Tweedy is reluctant to spend time addressing the Page Trowbridge Ranch Landfill
15 because it has absolutely nothing to do with any issue properly before the Commission in this
16 remand proceeding, the Company is compelled to expose AWC's inappropriate tactics to expand
17 the scope of this case beyond that intended by the Commission. Cornman Tweedy will address
18 AWC's accusations regarding the Page Trowbridge Ranch Landfill in bullet form below:

- 19 • No Robson utility or Robson entity had anything to do with creating the
20 Page Trowbridge Ranch Landfill and no Robson utility or Robson entity
21 has any responsibility for remediating the site or contamination, if any, of
22 the aquifer, facts which AWC cannot refute. Thus, there is no reason why
23 AWC "should be allowed to question Mr. Gerstman and Mr. Robson with
24 respect to Robson Communities' interactions with ADEQ related to the
25 Page Trowbridge site," or "notice of environmental concerns provided to
26 potential buyers."¹³ Obviously, such an inquiry is miles outside the scope
27 of this remand proceeding.
- The potable water provider for SaddleBrooke Ranch is AWC, and there is
no integration of water and wastewater services at SaddleBrooke Ranch.
- The SaddleBrooke Ranch Golf Course is owned by Robson Ranch
Mountains, LLC, which is not a party to this remand proceeding or even a
utility, for that matter. The SaddleBrooke Ranch Golf Course legally
withdraws groundwater (or recovered effluent) for irrigation of the golf
course and there is no contamination of the groundwater withdrawn for

¹² AWC Response at 14, lines 12-18.

¹³ *Id.* at 15, lines 2-5.

1 irrigation of the golf course, facts which AWC cannot refute. Further,
2 there are no facts to suggest that the withdrawal of groundwater for
3 irrigation of the golf course harms any other person or entity, or has any
4 adverse effect on the Page Trowbridge Ranch Landfill. Thus, there is no
5 basis whatsoever for testimony from Messrs. Robson and Gerstman to
6 address the golf course's "decision to utilize groundwater to provide water
7 service ... despite the development's location immediately adjacent to a
8 closed dumpsite for radioactive and toxic wastes from Arizona's public
9 universities."¹⁴ Likewise, there is no basis whatsoever for testimony from
10 Messrs. Robson and Gerstman to address "the potential impact on the
11 drinking water aquifer caused by Robson Communities' continued
12 withdrawals of groundwater to water the SaddleBrooke Ranch golf course
13 and common residential areas from wells located down gradient from the
14 nearby Page Trowbridge radioactive and toxic waste dump site."¹⁵

- 15 AWC attaches to its Response an excerpt from a Post-Closure Period
16 Expanded Groundwater Detection Monitoring Plan which states that
17 "Robson would not agree to allow monitoring wells to be installed on their
18 property."¹⁶ Without having the underlying facts (and even ignoring
19 relevant facts), AWC uses this single line from the monitoring plan to
20 justify its reckless accusation that Robson undertook efforts "to thwart
21 water quality monitoring needed to protect the drinking water aquifer."¹⁷
22 This is a complete fabrication which goes well beyond the bounds of
23 proper advocacy. As reported in the monitoring plan, but not mentioned
24 by AWC, Robson offered access to an irrigation well but it was deemed
25 unsuitable for the monitoring exercise.¹⁸ AWC does not and cannot know
what factors led to Robson's decision regarding a new monitoring well on
its property. Unfortunately, that lack of relevant knowledge did not stop
AWC from accusing Robson of thwarting water quality monitoring.
Moreover, water quality monitoring related to the Page Trowbridge Ranch
Landfill has nothing to do with the actions of a utility or any issue within
the scope of this remand proceeding.
- 26 AWC purports to know that "the Robson Communities business model
27 [was] devised, nurtured and implemented on a daily basis by Mr. Robson
28 and Mr. Gerstman" and that it "is focused primarily on the profits to be
realized from the sale of new homes rather than protection of scarce water
resources." How does AWC know that Mr. Gerstman "devised, nurtured
and implemented on a daily basis" the business model? Obviously, AWC
has no actual knowledge regarding Robson's business models, the persons
involved in developing such models, or the focus of such models. Thus,
AWC cannot support its reckless accusation that Robson focuses on

¹⁴ AWC Response at 14, lines 2-5.

¹⁵ *Id.* at 15, lines 6-9.

¹⁶ *Id.* at Exhibits D.

¹⁷ *Id.* at 15, lines 5-6.

¹⁸ *Id.* at Exhibit D.

1 profits over protecting water resources, and in any event, the Robson
2 business model is wholly irrelevant to any issue properly before the
Commission in this remand proceeding.

- 3
- 4 • AWC further purports to know that Robson is focused on “hid[ing] the
potential impacts of a nearby radioactive and toxic waste dump site on the
5 area’s drinking water supply.” Again, this is a reckless and baseless
6 accusation which is wholly irrelevant to any issue within the proper scope
of this remand proceeding.
 - 7 • Finally, assuming *arguendo* that the Page Trowbridge Ranch Landfill was
8 somehow relevant in this remand proceeding, there is no reason that Mr.
Soriano could not address questions raised by AWC. AWC certainly had
9 ample opportunity to ask Mr. Soriano about the landfill during his four-
hour deposition.

10 Another egregious example of the way in which AWC is attempting to impermissibly
11 expand the scope of this remand proceeding is the allegations, accusations and conjecture
12 regarding campaign contributions of Ed Robson, members of the Robson family, and employees
13 of Robson companies. Again, Cornman Tweedy is reluctant to spend time addressing Robson
14 family campaign contributions because they have nothing to do with any issue properly before
15 the Commission in this remand proceeding, but the Company is compelled to point out the
16 inappropriate tactics used by AWC in this case.

17 Attached as Exhibit E to AWC’s Response are 71 pages of campaign financing reporting
18 summaries spanning nearly 15 years and listing the contributions of Ed Robson and various
19 family members to a variety of local, state and federal candidates for political office. Without
20 any factual basis whatsoever, AWC speculates that these political contributions are the product
21 of the Robson business model. Bootstrapping from this speculation, AWC argues that “Mr.
22 Gerstman and Mr. Robson’s depositions are necessary to provide answers as to this aspect of
23 Robson Communities’ integrated business model.”¹⁹ Ignoring for a moment the fact that the
24 Robson business model is outside the scope of this remand proceeding, there is nothing illegal
25 about participating in the political process through campaign contributions, and AWC has
26 presented no facts that any of the campaign contributions listed in Exhibit E violate any
27

28 ¹⁹ AWC Response at 15, lines 18½-20½.

1 applicable laws or exceed any applicable contribution limits. Exhibit E shows that the Robson
2 family has funded many candidates for a variety of offices over a long period of time. AWC's
3 attempt to create a conspiracy based upon such participation should be emphatically rejected.

4 AWC alleges that "[r]ecently, evidence emerged of bundling personal campaign
5 contributions by both gentlemen, Robson family members and Robson employees to politicians
6 in Eloy at the same time Robson Communities was negotiating a favorable and lucrative
7 development agreement with Eloy related to the EJ Ranch property where the subject Cornman
8 Tweedy property is located."²⁰ With regard to this allegation, Cornman Tweedy would first
9 point out that there is no evidence of anything illegal or improper regarding the campaign
10 contributions of Mr. Robson or the Robson family, and Exhibit F to the Response does not
11 demonstrate otherwise. Moreover, AWC fails to explain how campaign contributions to
12 politicians in Eloy bear upon the issue in this remand proceeding which is "whether a public
13 service corporation, like Arizona Water, in this water challenged area and under the
14 circumstances presented in this case, is providing reasonable service if it is not able or not
15 willing to provide integrated water and wastewater services."²¹ Clearly, campaign contributions
16 by the Robson family and Robson employees are outside the scope of this remand proceeding.

17 One other statement by AWC requires a response. AWC suggests that Robson utility
18 revenues may have been used to reimburse Robson employees and Robson family members for
19 political campaign contributions.²² This is a very serious accusation and one that was made by
20 AWC with absolutely no basis in fact. Cornman Tweedy is shocked that AWC would sink to
21 such outrageous innuendo.

22 **B. Mr. Soriano Is the Designated Witness to Adopt and Sponsor the Pre-Filed**
23 **Testimonies of the Late Jim Poulos.**

24 Cornman Tweedy has pre-filed the testimony of three witnesses in this case: Dr. Fred
25 Goldman, Paul Hendricks, and the late Jim Poulos. Acting fully within its rights, Cornman
26 Tweedy has designated Mr. Soriano as the individual who will adopt and sponsor the testimonies

27 ²⁰ AWC Response at 15, lines 20½-24½.

28 ²¹ Procedural Order dated February 10, 2011, at 2, lines 6-10.

²² AWC Response at 16, lines 7-8.

1 previously filed by Mr. Poulos. At the October 5, 2011, Procedural Conference, the ALJ was
2 very clear that depositions regarding Cornman Tweedy's pre-filed testimony would be limited to
3 Messrs. Goldman, Hendricks and Soriano, ruling as follows:

4 Judge Nodes: Okay. Well, let me tell you how I see it. If, if we are saying that
5 the prior testimony that was offered -- and I will be honest, it has
6 been a long time since I looked at it -- that is still in play under the
7 rulings because we don't yet have a subsequent decision on the
8 remanded issues. So you need to provide a witness who, unless
9 you withdraw that testimony, then you need to provide a witness
who can respond to questions regarding the assertions made by the
witness, who was Mr. Poulos who is obviously now deceased.
And that is, that's, I think, a very fair consideration of the issue.

10 Okay. Now, Mr. Crockett, assuming Mr. Soriano is your designee,
11 and we also have, I guess, Dr. Goldman and -- is it Paul Henry?

12 Mr. Crockett: Hendricks.

13 * * *

14 Judge Nodes: And would both of those witnesses be available to be deposed?

15 Mr. Crockett: I believe the answer to the question is yes but I haven't talked to
16 either one of them about this.

17 Judge Nodes: Okay. Well, and obviously timing and everything can be worked
18 out between the parties. And so that shouldn't be an issue.²³

19 Mr. Goldman's deposition was taken by AWC on September 6, 2012, and Mr.
20 Hendricks' deposition was taken on September 7, 2012. Mr. Soriano's deposition was taken on
21 June 22, 2012. Each of these three depositions lasted a full four hours (and then some), and
22 Messrs. Goldman, Hendricks and Soriano responded to all of the questions posed by counsel for
23 AWC. With regard to Mr. Soriano, counsel for AWC questioned him on a broad variety of
24 topics including the Cornman Tweedy property at issue in this case, the operations of the various
25 utility companies owned by Robson family members, the operations of the various Robson
26 Resort Communities, and the relationships of the various companies to one another. Counsel for
27 AWC even asked about the political contributions of various Robson family members and
28 employees, as discussed above, a topic that was clearly irrelevant to any issue before the

²³ Transcript of October 5, 2011, Procedural Conference at 64-65.

Commission. Notwithstanding, in a spirit of good faith and openness, Mr. Soriano responded to all of AWC's questions even though many were far outside the limited scope of this proceeding.

In its Response, AWC provides its self-serving and subjective assessment that "Mr. Soriano largely missed the mark with his testimony,"²⁴ but offers little if any support for this groundless assertion. AWC then concludes that Mr. Soriano "is outside the management and decision structure of Robson Communities," which it uses to try to justify its need to "depose Mr. Robson and Mr. Gerstman to get the needed answers to outstanding data requests and elaboration to the conclusory statements in Mr. Poulos' prefiled testimony."²⁵ This is absurd given Mr. Soriano's position as Vice President and Chief Financial Officer of Robson Communities, Inc., and various utilities in the Robson suite of companies, which places him in the middle of all major decisions. The following excerpts from Mr. Soriano's deposition prove the point:

Mr. Hirsch: I'm looking at your Pima Utility prefiled direct and you're listed as a vice president for Robson Communities, Inc.

So what is Robson Communities, Inc.?

Mr. Soriano: Robson Communities, Inc., is an administrative services company that provides accounting, human resources, legal, and capital budgeting support services to the family of Robson companies. It is not a management company.

Mr. Hirsch: And do you still serve as vice president of that entity?

Mr. Soriano: Yes, I do.²⁶

With regard to the utilities within the Robson suite of companies, Mr. Soriano further testified as follows:

Mr. Hirsch: All right. On the utility side, are you an officer of any of the Robson family of utilities?

Mr. Soriano: I am an officer of the Robson utilities – of the different Robson utilities.

²⁴ AWC Response at 3, line 3.

²⁵ *Id.* at 3, lines 5-9.

²⁶ Deposition of Steve Soriano (Exhibit A to AWC Response) at 25-26.

1 Mr. Hirsch: And are you – do you tend to be the same officer in each of them
2 or does it vary?

3 Mr. Soriano: It's – I'm vice president of those entities.²⁷

4 * * *

5 Mr. Hirsch: [Referring to the Initial Direct Testimony of Jim Poulos] There is
6 a listing at page 1, lines 15-21 of ten public utilities owned or
7 controlled by Robson.

8 * * *

9 Are you the GM of these ten entities today?

10 Mr. Soriano: You know, my official title is vice president, but I, in fact, operate
11 as the general manager of those same utilities.²⁸

12 Additionally, Mr. Soriano described his long and extensive background with the Robson utilities:

13 Well, during my time at Robson, being involved in project development and land
14 development, I had the opportunity to work with Jim Poulos and [Karl Polen] on
15 water and wastewater planning for the projects.

16 Since the passing of Jim Poulos, I've spent a lot of time reading, studying, and
17 learning about the history of Robson projects, their water and wastewater utilities,
18 water and wastewater law in Arizona, water and wastewater practice in Arizona.

19 So I've – so I have ten years of experience working with our water and sewer
20 development departments and three years of intensive emersion into the sewer,
21 which is not a great phrase.

22 * * *

23 I'm also involved in the utility company rate cases. I'm also involved in annual
24 DWR and ADEQ reporting and permit renewals for the Robson utilities.²⁹

25 Mr. Soriano also has direct management involvement with other Robson companies,
26 including Cornman Tweedy, as further described in his deposition:

27 Mr. Hirsch: What other companies are you an officer of currently?

28 Mr. Soriano: The list is long, as I'm an officer of many of the companies. It's
probably over 50, 60 entities. But I'm a vice president of
Arlington Property Management Company, which is the managing
member of Cornman Tweedy, which is most relevant to today's

²⁷ Deposition of Steve Soriano (Exhibit A to AWC Response) at 27, lines 14-21.

²⁸ *Id.* at 46-47.

²⁹ *Id.* at 16, lines 3-16 and at 22, lines 10-12.

1 deposition.³⁰

2 Clearly, Mr. Soriano is very much inside the “management and decision structure of
3 Robson Communities” and AWC’s assertions to the contrary are without any support or merit.
4 Mr. Soriano is the witness who has been designated by intervenor Cornman Tweedy to adopt and
5 sponsor the testimony of Mr. Poulos, and he is clearly competent to serve in that role. AWC has
6 had more than 12 hours of cumulative deposition time with Messrs. Goldman, Hendricks and
7 Soriano. Given the clear limitation on the scope of this remand proceeding, as discussed above,
8 the clear limitation on the depositions of Cornman Tweedy witnesses as discussed below, and
9 the demonstrated fact that Mr. Soriano is a competent and knowledgeable witness, AWC’s
10 efforts to take the depositions of Messrs. Robson and Gerstman should be rejected.

11 Moreover, AWC provides no evidence that Messrs. Robson and Gerstman are more
12 knowledgeable (or even as knowledgeable) than Mr. Soriano regarding the matters that are
13 contained in the pre-filed direct testimonies of Mr. Poulos. AWC correctly notes in its Response
14 that “Cornman Tweedy’s counsel admitted that Mr. Soriano ‘may not know everything that Mr.
15 Poulos knows.’”³¹ This is a true statement, but it is equally true of Messrs. Robson and
16 Gerstman. The relevant question is whether Mr. Soriano is a competent and knowledgeable
17 witness who can adopt and sponsor the pre-filed testimonies of Mr. Poulos. Based upon his
18 experience as outlined in his deposition testimony above, the answer to this question is clearly
19 yes.

20 With regard to Mr. Gerstman specifically, AWC is well aware that he is General Counsel
21 to Robson Communities, Inc. Yet, AWC all but ignores the issue of attorney-client privilege.
22 As discussed above, Robson Communities, Inc., provides accounting, human resources, legal,
23 and capital budgeting support services to other companies affiliated with (*i.e.*, under common
24 control with) Robson Communities, Inc. Thus, Mr. Gerstman has provided (and continues to
25 provide) legal counsel to Cornman Tweedy and to other companies that are part of the Robson
26 family of companies. Mr. Gerstman is neither a director nor an officer (unlike Mr. Soriano) of

27 ³⁰ Deposition of Steve Soriano (Exhibit A to AWC Response) at 26, lines 7-14.

28 ³¹ AWC Response at 4, lines 20-22.

1 Arlington Property Management Company, the managing member of Cornman Tweedy, and he
2 holds no position with Cornman Tweedy, although he does own a small interest in Cornman
3 Tweedy (which is the exact same percentage interest owned by Mr. Soriano). It would be a
4 violation of the attorney-client privilege to compel the testimony of Mr. Gerstman in this case.

5 **C. Mr. Soriano Is the Most Knowledgeable Witness With Regard to the Topics**
6 **Covered in the Pre-Filed Testimonies of Mr. Poulos.**

7 Referring to Cornman Tweedy witness Steve Soriano, AWC asserts that “[t]he
8 Commission should not allow Cornman Tweedy to thwart the scope of the Company’s inquiry
9 ... by designating and producing witnesses who do not have adequate knowledge of the issues in
10 this proceeding.”³² Then, in an insulting and outrageous mischaracterization, AWC compares
11 Mr. Soriano to “an uninformed warm body that fails to respond to questions or is not adequately
12 prepared....”³³ AWC’s assertion is quickly discredited as utter nonsense by reading Mr.
13 Soriano’s deposition transcript, a copy of which is attached as Exhibit A to AWC’s Response.
14 As described above, Mr. Soriano is the most competent and knowledgeable witness to adopt and
15 sponsor the pre-filed testimonies of Mr. Poulos.

16 AWC also asserts in its Response that Mr. Soriano is “too new to Robson Communities’
17 management structures to have knowledge of the detrimental aspects of Robson Communities’
18 ‘integrated’ utility operations, and thus is not adequate witness.”³⁴ This assertion is seriously
19 off-base for at least two reasons. First, as discussed above, the integrated utility of operations of
20 the Robson utilities are not at issue in this case and are outside of the scope of this proceeding.
21 Moreover, there is no evidence in this case of any “detrimental aspects” of Robson’s utility
22 operations, AWC’s gratuitous allegation notwithstanding. Second, Mr. Soriano testified at his
23 deposition that he has “ten years of experience working with our water and sewer development
24 departments.”³⁵ Thus, AWC’s statement that Mr. Soriano is not an adequate witness is without
25 any basis or merit.

26 AWC states that “[o]nly Mr. Gerstman and Mr. Robson can address the issues that

27 ³² AWC Response at 5, lines 4-7.

28 ³³ *Id.* at 5, lines 17-18.

³⁴ *Id.* at 5, lines 20-22.

³⁵ Deposition of Steve Soriano (Exhibit A to AWC Response) at 16, lines 13-16.

1 Cornman Tweedy has placed into contention....³⁶ While Ed Robson is the Chief Executive
2 Officer, Chairman of the Board and one of two directors of Arlington Property Management
3 Company, the Manager of Cornman Tweedy, and while there is no question that Mr. Robson has
4 the power to make decisions on behalf of Cornman Tweedy, he is not the person most
5 knowledgeable about the issues and questions before the Commission in this remand proceeding.
6 He has limited knowledge about these issues, having delegated such matters to Mr. Soriano and
7 to legal counsel, including but not limited to Mr. Gerstman and counsel undersigned. With
8 regard to Mr. Gerstman, he has provided legal counsel to Cornman Tweedy and to other Robson
9 companies. His communications and advice to Cornman Tweedy are protected by the attorney-
10 client privilege.

11 In summary, Messrs. Soriano, Goldman and Hendricks are the representatives of
12 Cornman Tweedy who are most knowledgeable about the issues and questions properly before
13 the Commission in this remand proceeding. Thus, Cornman Tweedy's Motion for Protective
14 Order should be granted.

15 **D. Mr. Soriano Addressed All of the Questions Posed During his Four-Hour**
16 **Deposition, even Questions Far Outside the Scope of this Remand Proceeding.**

17 Notwithstanding the fact that AWC went far beyond the scope of this remand proceeding
18 in asking questions of Mr. Soriano during his deposition, he provided answers to substantially all
19 of AWC's questions. However, even when Mr. Soriano provided information on matters outside
20 the scope of this remand proceeding, AWC wants to delve even further into matters which are
21 clearly off-limits. Cornman Tweedy will discuss two specific examples that illustrate the point.

22 As one example, Mr. Soriano provided responses to questions regarding the creation and
23 use of underground recharge storage credits by Robson utilities. With regard to Pima Utility
24 Company, AWC's counsel testifies that between 2009 and 2011, the utility transferred
25 approximately 155 acre-feet of storage credits (a relatively small amount) to the PebbleCreek
26 golf courses,³⁷ golf courses by the way which are located within the CC&N of Litchfield Park

27 ³⁶ AWC Response at 5, lines 23-24.

28 ³⁷ *Id.* at 11, lines 7-8.

1 Service Company.³⁸ AWC then demands to know “(i) how these transfers affect Pima Utility’s
2 integrated operations at Sun Lakes; (ii) whether the rate payers at Sun Lakes are forced to
3 subsidize the private golf courses at PebbleCreek; and (iii) whether selling or transferring the
4 storage credit utility asset was approved by the Commission as required by applicable law and
5 regulations.”³⁹ Clearly, these topics have no relationship whatsoever to addressing “whether a
6 public service corporation, like Arizona Water, in this water challenged area and under the
7 circumstances presented in this case, is providing reasonable service if it is not able or not
8 willing to provide integrated water and wastewater services.”⁴⁰

9 As a second example, Mr. Soriano provided responses to questions from counsel for
10 AWC regarding the management of cash in the banking accounts of Robson Communities, Inc.,
11 and other Robson companies including Robson utilities.⁴¹ Based upon Mr. Soriano’s responses,
12 AWC asserts that it now needs to “inquire into how the inter-company loan process is accounted
13 for within Robson Communities’ utility operations, how those transactions impact homebuyers,
14 ratepayers, Robson Utilities’ stated rates of return and the operating costs of the utilities, and
15 who receives the benefits of these transfers.”⁴² AWC further asserts that it “should be allowed to
16 ask the masterminds behind these practices, Mr. Robson and Mr. Gerstman, about the reasons for
17 this financial maneuvering.”⁴³ How can AWC possibly know that Messrs. Robson and
18 Gerstman are the “masterminds” behind the cash management practices of the Robson
19 companies, and why does AWC believe that Messrs. Robson and Gerstman are more
20 knowledgeable (or even as knowledgeable) than the Vice President and Chief Financial Officer,

21 ³⁸ AWC also discusses in its Response the purchase of effluent recharge storage credits owned by
22 Robson Ranch Quail Creek, LLC, (“RRQC”) the development entity that developed Quail Creek
23 in southern Arizona. This is yet another red herring. AWC reports that RRQC has recharged
24 over 12,000 acre-feet of reclaimed water at a recharge facility located within Quail Creek, and
25 then claims that “the storage credits related to that recharged water have been transferred to other
26 Robson Communities’ entities at the far end of the Tucson AMA.” AWC Response at 9-10.
While some credits have been transferred, AWC is being less than candid with the Commission
because its research no doubt revealed that the vast majority of the storage credits are still held by
RRQC, which is a developer and not a utility. In any event, recharge credits held RRQC have
absolutely no relevance to the issues before the Commission in this remand proceeding.

26 ³⁹ AWC Response at 11, lines 13-17.

27 ⁴⁰ Procedural Order dated February 10, 2011 at 2, lines 7-10.

28 ⁴¹ Soriano Deposition Transcript (Exhibit A to AWC Response) at 111-113.

⁴² AWC Response at 12, lines 15-18.

⁴³ *Id.* at 12, lines 10-12.

1 Mr. Soriano? Even though the line of questioning was completely outside the scope of this
2 remand proceeding, AWC had every opportunity to ask Mr. Soriano about the cash management
3 practices.

4 AWC's efforts to expand this proceeding to include such matters as an analysis of the
5 rates of return and operating costs of the Robson utilities and the pricing of homes purchased
6 within Robson developments should be rejected. Cornman Tweedy's Motion for Protective
7 Order should be granted.

8 **E. Cornman Tweedy Has Shown Good Cause Under Rule 26(C) for a Protective**
9 **Order.**

10 Cornman Tweedy has clearly shown good cause why its Motion for a Protective Order
11 should be granted. AWC asserts in its Response that "the discovery rules are construed liberally
12 to promote discovery of all potentially relevant facts in order to promote the full resolution of
13 matters."⁴⁴ While this is a true statement generally, AWC conveniently ignores the fact that the
14 Commission has limited the scope of this remand proceeding and AWC is not entitled to conduct
15 discovery on matters which are far outside of that scope. Arizona Administrative Code (A.A.C.)
16 R14-3-101(A) states that the Arizona Rules of Civil Procedure govern "[i]n all cases in which
17 procedure is set forth neither by law, nor by these rules [the A.A.C.], nor by regulations or orders
18 of the Commission."⁴⁵ In this remand proceeding, the Commission has clearly limited the scope
19 of the inquiry. Adhering to the scope set by the Commissioners, the ALJ has appropriately
20 limited depositions to witnesses who have pre-filed testimony in this docket. In addition, the
21 ALJ has made it clear that the business models and business practices of utilities generally and
22 the Robson utilities specifically are outside the scope of this remand proceeding. In demanding
23 the depositions of Messrs. Robson and Gerstman, AWC is pursuing discovery which is well
24 outside the scope of this case. Cornman Tweedy's Motion for Protective Order should be
25 granted.
26

27 ⁴⁴ AWC Response at 6, lines 2-4 (citations omitted).

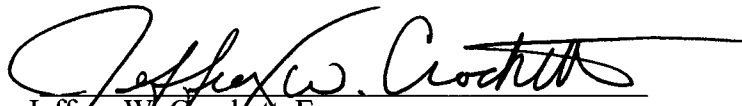
28 ⁴⁵ A.A.C. R14-3-101(A) (emphasis added).

1 **III. CONCLUSION.**

2 For the foregoing reasons, Cornman Tweedy requests that the Commission grant its
3 motion for a protective order and quash the depositions that have been scheduled for Messrs.
4 Gerstman and Robson.

5 RESPECTFULLY submitted this 13th day of December, 2013.

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